

ESTTA Tracking number: **ESTTA431310**

Filing date: **09/20/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201043
Party	Defendant Huang-Begovic, Catherine, Begovic, Binais
Correspondence Address	HUANG-BEGOVIĆ, CATHERINE 1155 N LA CIENEGA BLVD APT 301 WEST HOLLYWOOD, CA 90069-2430 binaisbegovic@gmail.com
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	09/20/2011
Attachments	Motion to Accept Late Answer.pdf (8 pages)(273829 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Serial No. 85/228,764,
For the mark MDBODY,

MYBODY, LLC,

Opposer,

vs.

Huang-Begovic, Catherine and,
Begovic, Binais

Applicants.

:
:
:
:
:
:
:
:
:
:
:

Opposition No. 91201043

MOTION TO ACCEPT LATE-FILED ANSWER

COMES NOW the Applicant, Catherine Huang-Begovic and Binais Begovic (hereinafter “Applicants”), by and through counsel, The Trademark Company, PLLC, and pursuant to TBMP § 508 and § 509.01(b), moves the Board for an Order reopening the time for the attached *Answer and Grounds of Defense* to be filed stating as follows:

STATEMENT OF FACTS

1. On or about August 8, 2011 Opposer, MYBODY, LLC (“Opposer”) instituted the instant Notice of Opposition against the registration of Applicant’s MDBODY trademark (“Applicant’s Trademark”).

2. The deadline to answer the Notice of Opposition was September 17, 2011.

ARGUMENT

The issue of whether default judgment should be entered against a defendant when it fails to file a timely answer to the complaint may also be raised by means other than the Board's issuance of a notice of default. TBMP § 508. The defendant itself, realizing that it is in default, may file a motion asking that its late-filed answer be accepted. *Id.* The standard for determining

whether default judgment should be entered against the defendant, for its failure to file a timely answer to the complaint, is the Fed. R. Civ. P. 55(c) standard, which requires that the defendant show good cause why default judgment should not be entered against it. *Id. See also* TBMP § 312.

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. TBMP § 312.02. The showing of a meritorious defense does not require an evaluation of the merits of the case. *Id.* All that is required is a plausible response to the allegations in the complaint. *Id.*

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. TBMP § 312.02. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. *Id.*

In the instant case the delay in filing was not as of the result of willful conduct or gross neglect on the part of the defendant. Rather, counsel for the Applicants had forwarded its recommended draft Answer to be reviewed and submitted to the Board prior to the September 17, 2011. Due to a computer email issue counsel for the Applicants did not receive final approval for the filing of the Answer until after the deadline to file the same had passed. As a result, the delay in filing, now remedied, was not the result of willful conduct or gross neglect on the part of the Defendant.

Moreover, the Opposer has and will not be substantially prejudiced by the delay in the instant filing. Insofar as Applicants have acted quickly to address this oversight no request to change the instant trial schedule has or need be made. As such, Opposer cannot claim prejudice as a result of this matter.

Finally, as more fully set forth in the attached *Answer and Grounds of Defense*, Applicants retain meritorious defenses in this matter which the policy of the law favors being heard by the Board and not having the matter decided by default due to the minor delay in the filing of the instant *Answer and Grounds of Defense*.

WHEREFORE the Applicants, by counsel, respectfully moves the honorable Board for an Order accepting its *Answer and Grounds of Defense* late further holding that the *Scheduling Order* entered by the Board on August 8, 2011 remains in full force.

Respectfully submitted this 20th day of September, 2011.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Tel. (800) 906-8626
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Counsel for Applicants

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Serial No. 85/228,764,
For the mark MDBODY,

MYBODY, LLC,

Opposer,

vs.

Huang-Begovic, Catherine and,
Begovic, Binais

Applicants.

:
:
:
:
:
:
:
:
:
:
:

Opposition No. 91201043

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 20th day of September,
2011, to be served, via first class mail, postage prepaid, upon:

Michael D. Hool
Hool Law Group, PLC
2398 East Camelback Road
Suite 1020
Phoenix, AZ 85016

/Matthew H. Swyers/
Matthew H. Swyers



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Serial No. 85/228,764,
For the mark MDBODY,

MYBODY, LLC.,

Opposer,

vs.

Huang-Begovic, Catherine and
Begovic, Binais,

Applicants.

:
:
:
:
:
:
:
:
:
:
:

Opposition No. 91201043

ANSWER AND GROUNDS OF DEFENSE

COMES NOW the Applicants, Catherine Huang-Begovic and Binais Begovic (hereinafter "Applicants"), by and through counsel, The Trademark Company, PLLC, and files their Answer and Grounds of Defense to the Notice of Opposition and in response to Opposer's allegations states as follows:

ANSWER

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the Introductory Paragraph of the Notice of Opposition and therefore denies the same. In response to the specifically enumerated paragraphs of the Notice of Opposition, Applicant responds as follows:

1. Applicant admits the allegations of Paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations set forth in Paragraph 2 of the Notice of Opposition as phrased and demands strict proof thereof.
3. Applicant denies the allegations set forth in Paragraph 3 of the Notice of Opposition and demands strict proof thereof.

4. Applicant admits the allegations of Paragraph 4 of the Notice of Opposition.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice of Opposition and therefore denies the same.
6. Applicant denies the allegations set forth in Paragraph 6 of the Notice of Opposition as phrased and demands strict proof thereof.
7. Applicant denies the allegations set forth in Paragraph 7 of the Notice of Opposition and demands strict proof thereof.
8. Applicant denies the allegations set forth in Paragraph 8 of the Notice of Opposition and demands strict proof thereof.
9. Applicant denies the allegations set forth in Paragraph 9 of the Notice of Opposition and demands strict proof thereof.
10. Applicant denies the allegations set forth in Paragraph 10 of the Notice of Opposition and demands strict proof thereof.
11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition and demands strict proof thereof.
12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition and demands strict proof thereof.
13. Applicant denies the allegations set forth in Paragraph 13 of the Notice of Opposition and demands strict proof thereof.
14. Applicant denies the allegations set forth in Paragraph 14 of the Notice of Opposition and demands strict proof thereof.

Applicant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed.

Respectfully submitted this 20th day of September, 2011.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Counsel for Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Serial No. 85/228,764,
For the mark MDBODY,

MYBODY, LLC.,

Opposer,

vs.

Huang-Begovic, Catherine and
Begovic, Binais,

Applicants.

:
:
:
:
:
:
:
:
:
:
:

Opposition No. 91201043

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 20th day of September,
2011, to be served, via first class mail, postage prepaid, upon:

Michael D. Hool, Esq.
Hool Law Group, PLC
2398 East Camelback Road, Suite 1020
Phoenix, AZ 85016

/Matthew H. Swyers/
Matthew H. Swyers